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Office of Policy and Legal Analysis

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OPLA~Notes

Nonpartisan Quarterly Newsletter

October 1998

*Publication of the Office of Policy and Legal Analysis
for the Maine State Legislature*

Volume II, Issue 2

In This Issue

- | | |
|---|---|
| • Sunrise Review Process | 1 |
| • Legislative Review of Agency Rules: 1998 Update | 3 |
| • Did You Know? | 4 |
| • Recent Legal Developments Recent Judicial Appointments | 4 |
| • Amendments to the Performance Based Budgeting Law | 5 |
| • Internet Intersection | 6 |
| • OPLA Publications | 7 |
| • OPLA~Notes Survey Results | 7 |

Newsletter Greetings

Welcome to the third edition of OPLA~Notes for 1998. This edition includes articles that summarize the Sunrise Review Process, the 118th Legislature's action on agency rules, the recent judicial confirmations and the changes made to the Performance Budgeting Law. This edition of the newsletter also provides useful Internet sites and the results of the OPLA~Notes survey.

In keeping with our nonpartisan status, the articles present the issues with a legislative perspective, but without making judgments or editorializing. We always welcome your comments or suggestions.



Sunrise Review Process for Occupational and Professional Regulation

Sunrise review is a process by which the Legislature requires the formal review of legislation proposing new regulatory boards or expanded regulatory authority before that legislation is enacted. The review applies to occupational and professional regulation and its purpose is to ensure that the regulation is necessary to protect the health, safety and welfare of the public. Sunrise review is required by 5 MRSA § 12015, sub-§ 3 when any committee of the Legislature considers proposed legislation that either: 1) establishes a board or license or otherwise regulates an occupation or profession that has not been previously regulated; or 2) substantially expands regulation of a profession or occupation currently regulated. This includes establishing a new category of regulation or expanding a current practitioner's scope of practice. For example, proposed legislation allowing naturopaths to prescribe medications other than homeopathic remedies is considered an expansion of scope of practice, and is subject to review.

The process for sunrise review established by 5 MRSA § 12015, sub-§ 3 establishes 13 criteria under which legislation is reviewed. It also requires the committee to hold an informal public meeting (without a public hearing) to review the legislation and the proposing party's justification of the suggested regulation using the thirteen review criteria.

The thirteen review criteria are as follows:

1. **Data on the group.** A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to

regulation, the names and addresses of associations, organizations and other groups representing practitioners and an estimate of the number of practitioners in each group;

2. **Specialized skill.** Whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met;

3. **Public health, safety, welfare.** The nature and extent of potential harm to the public if the profession or occupation is not regulated, extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement and certain other relevant authorities that have been lodged against practitioners of the profession or occupation in this State within the past 5 years;

4. **Voluntary and past regulatory efforts.** A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public;

5. **Cost; benefit.** The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect cost to consumers;

6. **Service availability for regulation.** The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public;

7. **Existing laws and regulations.** The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners;

8. **Method of regulation.** Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, and the rationale for the regulation;

9. **Other states.** A list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of before-and-after analysis;

10. **Previous efforts.** The details of any previous efforts in this State to implement regulation of the profession or occupation;

11. **Mandated benefits.** Whether the profession or occupation plans to apply for mandated benefits;

12. **Minimal competence.** Whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are; and

13. **Financial analysis.** The method proposed to finance the proposed regulation.

After the informal public meeting, the committee has the following three choices:

1. Hold a public hearing and evaluate the proposal based on the review criteria and recommend Ought To Pass, Ought To Pass as Amended, or Ought Not To Pass;

2. Require the Commissioner of Professional and Financial Regulation to conduct an independent assessment. At the discretion of the commissioner, the proposing party may be assessed a fee not to exceed \$500; or

3. Request that the Commissioner of Professional and Financial Regulation establish a technical review committee to conduct an assessment. At the discretion of the commissioner, the proposing party may be assessed a fee not to exceed \$1,000.

The sunrise review process was first used during the First Regular Session of the 118th Legislature. During that session, the Joint Standing Committee on Business and Economic Development identified six bills that were subject to sunrise review. These bills and their outcomes under the sunrise review process are summarized at the top of the next page.

Following review of major substantive rules, the Legisla-

| LD | Profession Proposed to be Regulated | Outcome of Sunrise Review |
|--|---|---|
| 1005 & 1595 | Building Contractors | Regulation not approved. |
| 1430 (joint with Agriculture, Conservation and Forestry Committee) | Professional Loggers | Intent was accomplished without regulation. Penalties for timber trespass were increased. |
| 1483 | Interpreters for the Deaf and Hard-of-Hearing | New registration category established. A technical review committee was appointed to review best method for regulation. Report due 2/15/99. |
| 1525 | Massage Therapists | New license structure approved. Registration category was repealed, requiring all "massage therapists" to be licensed by 2001. |
| 1672 | Sexual Assault Nurse Examiners | Intent was accomplished without regulation. Board of Nursing issued advisory ruling. |

LEGISLATIVE REVIEW OF AGENCY RULES 1998 UPDATE

Under amendments to the Maine Administrative Procedure Act enacted in 1995, major substantive agency rules may not be finally adopted by an agency until they have been reviewed by the Legislature. The new law requiring review of major substantive rules was enacted to address the concern of legislators that agencies may fail to comply with the intent of the Legislature in adopting rules and that the Legislative Branch needs to exert sufficient oversight of Executive Branch rule-making activities.

Major substantive rules are agency rules that the Legislature has designated as such. Ordinarily they will be rules that the Legislature, when granting rule making authority, expects will be controversial or complex or that will have a significant impact on the public. In 1996 and 1997, the first years of operation of the new law, 51 agency rules were designated as major substantive by the Legislature. Examples of rules designated as major substantive are learning results standards, storm water management rules, MTBE containment standards, day care and nursery licensing requirements and several rules regulating electric utility restructuring. Rules that are not designated major substantive are considered routine technical rules and are not subject to prior legislative review.

ture may authorize final adoption as proposed by the agency, authorize adoption with specified changes to be made by the agency or deny authorization for final adoption. Prior to final adoption as authorized by the Legislature, major substantive rules are only provisionally adopted and may not be enforced by the agency. If the Legislature fails to act on major substantive rules during the session they are submitted for review, the agency may finally adopt and implement them without further legislative approval.

The review process for a major substantive rule by the Legislature consists of a referral of the rule in the form of a legislative resolve to the appropriate joint standing committee; review and consideration of the rule identified in the resolve by the committee; and issuance of a committee report on the resolve to the full Legislature. The committee's review includes consideration of whether the rule exceeds the scope of the agency's authority; conflicts with other laws; is necessary to accomplish the objectives of the authorizing legislation; and is reasonable in its impact on the public. Both bodies of the Legislature consider the committee report and, if passed, send it to the Governor for signature.

Under the rules review law, the Second Regular and Second Special Sessions of the 118th Legislature took the following actions on major substantive agency rules.

- 13 agency filings were accepted for review embodying 18 specific major substantive rules from 8 agencies. Two agency filings were not accepted because they were incomplete. One of those was corrected and refiled before the end of the session; the other was not refiled in 1998.

- and refiled before the end of the session; the other was not refiled in 1998.
- The rule filings were introduced to the Legislature in the form of 13 legislative resolves and referred to the appropriate joint standing committees for review. Nine committees participated in review of major substantive rules. The Utilities and Energy and the Health and Human Services committees, each with 3 resolves, received the most referrals.
- Each rules review resolve was scheduled for public hearing by the committee to which it was referred. At least one committee work session was held on each resolve. Four of the resolves required 2 or more work sessions.
- All the rules submitted for review in 1998 were authorized for final adoption. Four were authorized without changes; 9 were authorized conditionally upon specified changes being made by the agency.

In addition to review of provisionally adopted major substantive rules, the Legislature passed legislation in 1998 granting new rulemaking authority to certain agencies. In all, 14 new major substantive rules were authorized for final adoption by laws passed this year.

The enclosed insert lists a). major substantive rules authorized this past session by the Legislature for final adoption and b). new major substantive rulemaking authority granted to state agencies by the Legislature in 1998.

Did You Know?.....



Maine has 96 state-approved private schools. Cumberland County has the most approved private schools with 29; Penobscot is second on the list with 11; and Androscoggin and York counties each have 9. Waldo, Piscataquis, and Franklin counties each have one approved private school.



Moose are the largest members of the deer family. They are excellent swimmers, capable of sustaining a speed of 6 miles per hour in the water. Moose also move swiftly on land, some have been

clocked at 35 miles an hour. This giant deer can attain a height of 7.5 feet and weigh 1800 pounds.

Recent Legal Developments



Recent Judicial Appointments

Upon endorsement by the Judiciary Committee, 12 judges and justices appointed to the Maine District Court, Maine Superior Court and Maine Supreme Judicial Court were confirmed by the Senate:

- **Justice Donald Alexander**, who joins the Maine Supreme Judicial Court after 18 years on the Maine Superior Court, practiced law in the Attorney General's Office.
- **Justice Carl O. Bradford** was appointed an active retired justice of the Maine Superior Court. Justice Bradford served on the Maine Superior Court from 1981 to 1998.
- **Justice Susan Calkins** joins the Maine Supreme Judicial Court. She served on the Maine Superior Court for 3 years, and prior to that served as a judge on the Maine District Court and a Chief Judge of that court. She practiced law at Pine Tree Legal Assistance, where she also served as executive director.
- **Judge Rae Ann French** was reappointed to the Maine District Court. Judge French has served on the Maine District Court for 7 years.
- **Judge Jessie Briggs Gunther**, who was reappointed to the Maine District Court, has transferred from the District Court in Dover-Foxcroft to the District Court in Bangor. Judge Briggs previously served on the Maine District Court from 1976 to 1980 and on the Maine Superior Court from 1980 to 1986.
- **Justice Jeffrey Hjelm**, who served as a judge on the Maine District Court since 1992, joins the Maine Superior Court. Prior to serving as a judge, Justice Hjelm worked in private practice in Bangor and

Performance Budgeting Update: Changes in the Performance Budgeting Law Approved

- Superior Court. Prior to serving as a judge, Justice Hjelm worked in private practice in Bangor and served in the Attorney General's Office in Bangor in the criminal division.
- **Justice Thomas Humphrey**, who served as a judge on the Maine District Court since 1993 and also as deputy chief judge, joins the Maine Superior Court. Justice Humphrey worked in private practice for 20 years prior to serving on the court.
- **Judge Keith Powers** joins the Maine District Court after a career in private practice in Portland.
- **Justice David G. Roberts** was appointed an active retired justice of the Maine Supreme Judicial Court. Justice Roberts served previously on the Maine Supreme Judicial Court.
- **Judge Ronald Russell** was reappointed to the Maine District Court.
- **Judge Kevin Stitham** joins the Maine District Court after practicing law in private practice in Dover-Foxcroft.
- **Justice Thomas Warren**, who joins the Maine Superior Court, has 20 years experience in civil and appellate law practice. He served in the United States Attorney's Office and the Maine Attorney General's Office.

In July, another Maine jurist, **Justice Kermit Lipez** was appointed to the United States Court of Appeals for the First Circuit. On July 24th, the United States Court of Appeals for the First Circuit held a special session in Portland during which Justice Lipez was inducted into the court. Justice Lipez previously served on the Maine Supreme Judicial Court and the Maine Superior Court.

In the 2nd Regular Session, the 118th Legislature amended the performance budgeting statute (5 MRSA §1710-K) with passage of LD 2002, An Act to Delay the Implementation of Performance Budgeting for State Government. Public Law 1997, chapter 764 delays full implementation of performance budgeting until the 2002-2003 biennium, and modifies various procedures relating to performance budgeting. In summary, Public Law 1997, chapter 764 does the following:

- Modifies the definition of various terms used in the law, such as "policy area" and "department or agency goals" and "strategies";
- Makes participation in performance budgeting optional to the Legislative and Judicial branches;
- Changes the composition of the Commission on Performance Budgeting, and requires that its chair be a legislator;
- Directs the Commission on Performance Budgeting to recommend an appropriate method of auditing by January 15, 1999;
- Requires agencies to prepare draft strategic plans by December 1, 1998, and final plans by December 1, 1999 and to make biennial revisions thereafter;
- Requires agencies to coordinate their strategic plans, including goals and objectives, with other agencies;
- Directs the Governor to present a prototype performance budget by December 31, 1999 for legislative review; and
- Requires agency budget proposals to be consistent with strategic plans by September 1, 2000 and requires goals, measurable objectives and strategies be identified for each program.

Y2K AND THE FUTURE

The year 2000 presents a major challenge for Information System managers in all sectors of society. Government agencies, businesses, nonprofits, and educational facilities alike will need to either purchase new computer systems or provide "fixes" to existing systems to eliminate programming problems related to calendar year 2000.

Y2K, which stands for the year 2000, is a technical difficulty that almost all older computer systems will experience at the turn of the century. Since the advent of computers, a two-digit date format has been routinely used to represent all years (e.g., 1995 is just "95") in computer systems. The two-digit system was adopted in order to save on the high cost of data storage, thinking that the computer programs would be replaced long before the year 2000. However, large numbers of 10, 15, and 20 year old computer programs are still in use. Therefore, when the year 2000 arrives two-digit computers will think it is the year 1900 since only "00" will register. This will create conflicts when dates are used in calculations. Newer computer systems, however, have overcome the technical problems associated with the Y2K dilemma and are considered "Year 2000 Compliant."

Industry analysts estimate that the worldwide cost to fix Y2K computer systems will range between \$400 and \$600 billion.



Policy and Government

The Brookings Institution: A private, nonprofit research organization that "seeks to improve the performance of American institutions, the effectiveness of government programs, and the quality of US public policies." The page offers the following subjects to select from: economics, foreign policy, government, and the Center for Public Policy Education.

<http://www.brook.edu/>

FinanceNet: Comprehensive public financial management site that is part of the National Performance Review established by Vice President Gore's office. Select financial management topics from government sales, federal, state, and international categories.

<http://www.finanenet.gov/>

Thomas: Federal legislation from 1973 to present, as well as links to other governmental information.

<http://thomas.loc.gov/>

Provides links to "hot" topics in government by subject.

<http://thomas.loc.gov/home/html.arc/hot-subj.html>

United States Code: Search the federal statutes in force as of January 16, 1996 by title. Also assists with tracking recent amendments to the U.S. Code.

<http://www.law.cornell.edu/uscode/>



Maine State Legislature

The State of Maine statutes, including laws passed in 1998, are available through the Legislature's homepage. The website also includes access to current bill text, amendments and final disposition information.

<http://www.state.me.us/legis>

Law and Legislative Reference Library: Provides access to URSUS catalog, collections information, reference information, legislative history instructions and interlibrary loan information, and lists of Justices for the Maine Supreme Judicial Court and ME Attorney Generals. The Library's latest addition is an in-house index to NCSL Legisbrief, a two-page issue brief published by the National Conference of State Legislatures (NCSL).

<http://www.state.me.us/legis/lawlib>



Technology

National Technology Transfer Center: The Center is an educational facility that helps promote federally-funded technologies developed by federal agencies, universities and private industries. The areas of interest are business assistance, environmental, manufacturing, technology transfer, and telemedicine. The page also has links to other technology-based websites.

<http://www.nttc.edu/nttc.html>



News

Reuters News Service: This well-known news service provides an easy-to-use format for retrieving news and financial information. Access to some of the information requires a fee-based subscription; however, a quick tour of the site will reveal lots of free news and financial information. The front page runs a continuous showing of current news developments. Also look for the very useful site map.

<http://www.usatoday.com/>

The Ellsworth American: For all the latest news Downeast, visit this newspaper. The site has a calendar of events section that is useful if you plan to visit the area.

<http://ellsworthamerican.com/>

General Interest



Car Talk: The on-line version of National Public Radio's Car Talk program. The site includes highlights from the radio show, lemon law help, test drive reviews, and an opportunity to e-mail funny men Tom and Ray. Anyone contemplating an automobile purchase may want to visit this site.

<http://cartalk.cars.com/>



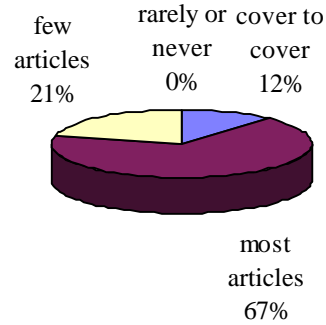
OPLA PUBLICATIONS

A listing of study reports of legislative committees and commissions categorized by year is available from OPLA. For printed copies of any of these publications, please contact the Office of Policy and Legal Analysis at 13 State House Station, Augusta, Maine 04333 (287-1670) or stop by Rooms 101/107 of the State House. Legislators and members of the public may request a copy at no charge. Additional copies of the publications are available at nominal cost. In addition, many of the legislative studies staffed by OPLA during the 117th and 118th Legislature are available on the OPLA website at: <http://www.state.me.us/legis/opla>

OPLA~Notes Survey Results

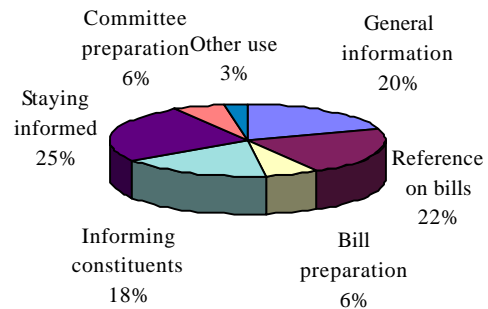
Thank you to all the Legislators who took time to respond to the OPLA~Notes survey enclosed with the June edition. The response rate was 18% and the information provided to us on the surveys returned was both informative and helpful as we seek to continually improve the newsletter. A majority of the respondents read most of the articles in the newsletter and find that the newsletter is about the right length and has about the right number of articles.

How thoroughly do you read OPLA Notes?



A majority of the respondents also find that four publications a year is about the right number and give the layout, presentation and readability of the newsletter high marks (a "4" on a scale of "5" for excellent). A majority of the respondents found the regular features in OPLA~Notes (i.e. feature article, legal issue article, study information) to be either quite informative or extremely informative. A majority of the respondents use the information in OPLA~Notes for the following: staying informed on upcoming issues or studies; reference/refresher on bills or other legislative action; general information or education on legislative matters; and informing constituents and others of legislative activities.

For which of the following do you use the information in OPLA~Notes?



Suggestions for improvements in the newsletter included the following: providing the effective date of legislation in articles; making the legal article less lengthy and technical; shortening the length of the feature article; and avoiding repetitiveness of some of the information (may have already received the information from another source). Some of the suggestions for future articles

commissions. Thank you for all of these great suggestions. We will be incorporating them into future editions of OPLA~Notes.

A Word About OPLA

The Office of Policy and Legal Analysis (OPLA) is a nonpartisan office of the Maine State Legislature. It operates under the auspices of the Legislative Council. The office provides professional staff assistance to the joint standing and select committees, including provision of policy and legal research and analysis, coordination of the committee process, drafting of bills and amendments, statutory analysis of budget bills in cooperation with the Office of Fiscal and Program Review and preparation of legislative proposals, reports and recommendations. Following is the mission of the office:

OPLA Mission

The Office of Policy and Legal Analysis assists, in a nonpartisan and responsive manner, the Maine Legislature, its committees and its members in fulfilling the Legislature's mission by providing objective information, impartial legal and policy analysis, and assisting in formulating and drafting legislative proposals, reports and recommendations.

OPLA~Notes

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